

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) CR-18-00258-EJD &  
 ) CV-18-01603-EJD  
 PLAINTIFF, )  
 )  
 VS. ) SAN JOSE, CALIFORNIA  
 )  
 ELIZABETH A. HOLMES AND RAMESH ) APRIL 22, 2019  
 SUNNY BALWANI, )  
 ) PAGES 1 - 27  
 DEFENDANTS. )  
 )  
 \_\_\_\_\_ )  
 )  
 SECURITIES AND EXCHANGE )  
 COMMISSION, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 RAMESH SUNNY BALWANI, )  
 )  
 DEFENDANTS. )  
 \_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE EDWARD J. DAVILA  
 UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
 BY: JOHN BOSTIC  
 ROBERT LEACH  
 JEFFREY SCHENK  
 150 ALMADEN BOULEVARD, SUITE 900  
 SAN JOSE, CALIFORNIA 95113

OFFICIAL COURT REPORTER:  
 IRENE L. RODRIGUEZ, CSR, RMR, CRR  
 CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
 TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP  
BY: KEVIN M. DOWNEY  
LANCE WADE  
725 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE  
BY: JOHN D. CLINE  
ONE EMBARCADERO CENTER, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94111

FOR DEFENDANT BALWANI: DAVIS, WRIGHT & TREMAINE LLP  
BY: JEFFREY COOPERSMITH  
STEPHEN CAZARES  
KELLY M. GORTON  
505 MONTGOMERY STREET, SUITE 800  
SAN FRANCISCO, CALIFORNIA 94111

FOR THE S.E.C.: UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION  
BY: SUSAN F. LAMARCA  
RAHUL KOLHATKAR  
44 MONTGOMERY STREET, SUITE 2600  
SAN FRANCISCO, CALIFORNIA 94104

1 SAN JOSE, CALIFORNIA

APRIL 22, 2019

2 P R O C E E D I N G S

3 (COURT CONVENED AT 1:36 P.M.)

01:36PM 4 THE COURT: WELL, LET'S NOW TURN TO 18-258, UNITED  
01:36PM 5 STATES VERSUS ELIZABETH HOLMES, RAMESH SUNNY BALWANI, AND WE'LL  
01:36PM 6 CALL COMPANION CASE 18-1603, S.E.C. VERSUS BALWANI.

01:36PM 7 IF THOSE PARTIES COULD COME FORWARD, PLEASE.

01:36PM 8 MR. BOSTIC: GOOD AFTERNOON, YOUR HONOR.  
01:36PM 9 JOHN BOSTIC, JEFF SCHENK, AND BOB LEACH FOR THE UNITED STATES.

01:36PM 10 THE COURT: GOOD AFTERNOON. LET ME CAPTURE YOUR  
01:37PM 11 COLLEAGUES.

01:37PM 12 MS. LAMARCA: SUSAN LAMARCA AND RAHUL KOLHATKAR FOR  
01:37PM 13 THE S.E.C.

01:37PM 14 THE COURT: THANK YOU.

01:37PM 15 MR. DOWNEY: GOOD AFTERNOON, YOUR HONOR.  
01:37PM 16 KEVIN DOWNEY AND LANCE WADE FOR ELIZABETH HOLMES WHO'S PRESENT  
01:37PM 17 IN COURT AS WELL.

01:37PM 18 THE COURT: THANK YOU. GOOD AFTERNOON.

01:37PM 19 MR. COOPERSMITH: GOOD AFTERNOON, YOUR HONOR.  
01:37PM 20 JEFF COOPERSMITH FOR RAMESH BALWANI WHO IS TO MY RIGHT AND ALSO  
01:37PM 21 KELLY GORTON AND STEVE CAZARES FROM MY OFFICE.

01:37PM 22 THE COURT: GOOD AFTERNOON. THIS IS ON FOR FURTHER  
01:37PM 23 STATUS. I HAVE READ AND REVIEWED YOUR DOCUMENT 66, AND WE'RE  
01:37PM 24 CALLING THE CRIMINAL CASE FIRST, AND THEN WE'LL TURN TO THE  
01:37PM 25 S.E.C. CASE IN JUST A MOMENT.

01:37PM 1 I HAVE READ THE JOINT MEMORANDUM. THANK YOU FOR THAT.

01:37PM 2 I SUPPOSE I SHOULD GET UPDATED FROM COUNSEL. IT LOOKS  
01:37PM 3 LIKE THERE'S PROBABLY TWO MOTIONS THAT WILL BE PENDING IF NOT  
01:37PM 4 PENDING CURRENTLY, AND I'D LIKE TO DISCUSS THAT. I HAD SOME  
01:37PM 5 THOUGHTS ALSO ABOUT TRIAL DATES, AND WE SHOULD PROBABLY BE  
01:37PM 6 THINKING ABOUT AND LOOKING AT TRIAL DATES ONGOING.

01:37PM 7 SO, COUNSEL, WHO WOULD LIKE TO GO FIRST? MR. BOSTIC.

01:38PM 8 MR. BOSTIC: SO, YOUR HONOR, ON THE TWO PENDING  
01:38PM 9 MOTIONS MY COLLEAGUE, MR. LEACH, WILL ADDRESS THE MOTION TO  
01:38PM 10 STAY WHEN WE DISCUSS THAT.

01:38PM 11 ON DEFENDANTS' MOTION TO COMPEL DISCOVERY PRODUCTION FROM  
01:38PM 12 THE GOVERNMENT, AS THE COURT KNOWS FROM THE JOINT STATUS  
01:38PM 13 SUBMISSION, THE GOVERNMENT HAS PRODUCED APPROXIMATELY 20  
01:38PM 14 MILLION PAGES ALREADY. THE ADDITIONAL CATEGORIES OF DOCUMENTS  
01:38PM 15 ADDRESSED IN THE PENDING MOTION ARE MOSTLY HELD IN THE HANDS OF  
01:38PM 16 GOVERNMENT AGENCIES LIKE THE FDA AND THE CMS.

01:38PM 17 IN ORDER TO RESPOND TO THAT MOTION, THE GOVERNMENT  
01:38PM 18 BELIEVES THAT IT NEEDS TO COLLECT SOME ADDITIONAL INFORMATION  
01:38PM 19 FROM THOSE AGENCIES.

01:38PM 20 I INFORMED COUNSEL FOR MS. HOLMES JUST BEFORE THIS HEARING  
01:38PM 21 THAT THE LAWYERS THAT I'VE BEEN DEALING WITH AT CMS AND FDA ARE  
01:38PM 22 OUT OF TOWN OR RECENTLY OUT OF TOWN AND I BELIEVE OUT OF THE  
01:38PM 23 COUNTRY.

01:38PM 24 ONE REPRESENTING CMS RETURNS FROM BEING ON LEAVE I BELIEVE  
01:38PM 25 ON MAY 1ST OR 2ND. I THINK IN ORDER TO PRESENT THE COURT WITH

01:39PM 1 THE FACTS THAT IT NEEDS TO RULE ON THAT MOTION, I DO NEED TO  
01:39PM 2 CONSULT WITH THOSE ATTORNEYS. THE GOVERNMENT COUNSEL IN THIS  
01:39PM 3 CASE DOES NOT REPRESENT THOSE AGENCIES AND WILL NOT REPRESENT  
01:39PM 4 THOSE AGENCIES FOR PURPOSES OF THIS CASE. SO IN ORDER TO GET  
01:39PM 5 THAT INFORMATION FOR THE COURT, I WOULD LIKE A CHANCE TO  
01:39PM 6 CONSULT WITH THOSE LAWYERS. SO I WOULD JUST ASK THAT IN  
01:39PM 7 SETTING A BRIEFING AND HEARING SCHEDULE FOR THAT MOTION WE  
01:39PM 8 ACCOUNT FOR THAT.

01:39PM 9 THE COURT: OKAY. HAVE YOU MET AND CONFERRED ABOUT  
01:39PM 10 THAT?

01:39PM 11 MR. DOWNEY: YOUR HONOR, WE DISCUSSED IT. OUR  
01:39PM 12 REFLECTION ON MR. BOSTIC'S REQUEST WAS OF COURSE WE WANT TO  
01:39PM 13 ACCOMMODATE HIM UNDERTAKING A REASONABLE PROCESS SO THE MOTION  
01:39PM 14 CAN BE BRIEFED.

01:39PM 15 WE'RE CONCERNED ABOUT THE PACE OF THE PRODUCTION OF  
01:39PM 16 DISCOVERY. THERE'S NO --

01:39PM 17 THE COURT: IT'S ONLY MILLIONS OF PAGES.

01:39PM 18 MR. DOWNEY: YEAH, MILLIONS OF PAGES HAVE ALREADY  
01:39PM 19 BEEN PRODUCED. I GATHER MILLIONS MORE ARE TO BE PRODUCED.

01:39PM 20 SO WE DON'T OPPOSE THAT. WE JUST -- IN THE CONTEXT OF A  
01:39PM 21 BROADER DISCUSSION ABOUT WHEN IT'S REALISTIC TO SET A TRIAL  
01:39PM 22 DATE.

01:39PM 23 THE COURT: SURE.

01:39PM 24 MR. DOWNEY: SO ASSUMING THAT WE HAVE, YOU KNOW, AN  
01:40PM 25 OPPORTUNITY, IF WE PREVAIL ON THE MOTION, AN ADEQUATE

01:40PM 1 OPPORTUNITY TO REVIEW WHATEVER IS PRODUCED, THAT'S FINE WITH  
01:40PM 2 US. WE'RE JUST CONCERNED BECAUSE THE AMOUNT OF TIME, LEAD TIME  
01:40PM 3 THAT THE GOVERNMENT PROPOSED IN THE JOINT STATUS MEMORANDUM  
01:40PM 4 SOUNDS LIKE A FAIR AMOUNT OF TIME, BUT GIVEN THE VOLUME OF  
01:40PM 5 MATERIAL IT'S REALLY NOT.

01:40PM 6 SO OUR CONCERN ABOUT THAT IS NOT ACCOMMODATING MR. BOSTIC,  
01:40PM 7 WHICH WE'RE HAPPY TO DO, IT'S JUST ABOUT THE BROADER SET OF  
01:40PM 8 ISSUES.

01:40PM 9 THE COURT: SURE. WELL, THANK YOU.

01:40PM 10 MY SENSE, AND IT'S PROBABLY YOUR EXPERIENCE ALSO, WITH  
01:40PM 11 THESE TYPES OF MOTIONS TYPICALLY THERE'S ADDITIONAL MEET AND  
01:40PM 12 CONFERES. SOMETIMES THERE'S RESOLUTION REGARDING WHAT CAN BE  
01:40PM 13 OBTAINED AND WHAT IS OBTAINED. SOMETIMES THE INFORMATION, WHEN  
01:40PM 14 THE GOVERNMENT IS IN THEIR SITUATION THAT THEY'RE IN NOW, WHEN  
01:40PM 15 THEY MEET WITH THE OTHER INDIVIDUALS THEY'RE ABLE TO SECURE  
01:40PM 16 ADDITIONAL INFORMATION THAT MIGHT NOT CURE THE ENTIRETY OF THE  
01:40PM 17 DEFECTS AS YOU SEE IT NOW BUT AT LEAST GO A LONG WAY TOWARDS  
01:41PM 18 THAT.

01:41PM 19 MR. BOSTIC AND MR. SCHENK, IF WHAT I'M HEARING IS THAT YOU  
01:41PM 20 NEED TO DISCUSS OR AT LEAST TALK WITH OTHER AGENCIES REGARDING  
01:41PM 21 OTHER DISCOVERY MATTERS THAT MIGHT BE USEFUL TO THAT  
01:41PM 22 CONVERSATION, THAT'S WHAT I'M HEARING, THEN I THINK THAT MAYBE  
01:41PM 23 WE CAN FIND SOME ACCORD WHERE I DON'T KNOW IF WE NEED AN  
01:41PM 24 ADDITIONAL STATUS TO DETERMINE A DATE OR IF I GIVE YOU DATES  
01:41PM 25 NOW. I HATE TO DO THAT NOW AND BLIND THEM NOT KNOWING WHAT IS

01:41PM 1 IN STORE FOR YOUR CONVERSATIONS.

01:41PM 2 MR. BOSTIC: YOUR HONOR, JUST TO BE CLEAR, I THINK  
01:41PM 3 THAT IS PART OF THE OBJECTIVE OF THOSE ADDITIONAL CONVERSATIONS  
01:41PM 4 WITH AGENCY COUNSEL TO SEE WHETHER THERE'S SOME MIDDLE GROUND,  
01:41PM 5 SOME ABILITY TO COMPROMISE.

01:41PM 6 BUT IN ADDITION, I BELIEVE THAT THE DEFENSE MOTION WILL  
01:41PM 7 TURN AT LEAST PARTLY OR IN LARGE PART ON WHETHER THE  
01:41PM 8 GOVERNMENT, WHETHER THE PROSECUTION IS DEEMED TO HAVE ACCESS TO  
01:41PM 9 THE DOCUMENTS IN THE POSSESSION OF THESE AGENCIES.

01:41PM 10 SO IT'S REALLY TO EXPLAIN THOSE RELEVANT FACTS TO THE  
01:42PM 11 COURT TO DETERMINE TO WHAT EXTENT DO WE HAVE ACCESS TO THOSE  
01:42PM 12 DOCUMENTS.

01:42PM 13 THE COURT: SURE. YOU CAN'T HAVE THAT CONVERSATION  
01:42PM 14 UNTIL THE FIRST PART OF MAY IT SOUNDS LIKE.

01:42PM 15 MR. BOSTIC: CORRECT, YOUR HONOR, AT LEAST WE  
01:42PM 16 CANNOT -- AT LEAST AS TO CMS WE CANNOT FINISH THAT CONVERSATION  
01:42PM 17 UNTIL THEN.

01:42PM 18 THE COURT: ALL RIGHT. DO YOU HAVE SUGGESTIONS  
01:42PM 19 ABOUT WHAT WE SHOULD DO?

01:42PM 20 MR. DOWNEY: YOUR HONOR, I THINK MY SUGGESTION WOULD  
01:42PM 21 BE THAT WE FILE AN UPDATE WITH THE COURT PERHAPS AT THE END OF  
01:42PM 22 THE WEEK FOLLOWING THE WEEK WHEN MR. BOSTIC ANTICIPATES THAT  
01:42PM 23 HE'LL HAVE THOSE CONVERSATIONS.

01:42PM 24 MY CONCERN IS ONLY THIS, I ANTICIPATE THAT THE AGENCIES  
01:42PM 25 PROBABLY WILL PRODUCE SOME ADDITIONAL AMOUNT OF MATERIAL. IT'S

01:42PM 1 CLEAR TO US FROM OUR REVIEW OF WHAT HAS BEEN PRODUCED THUS FAR  
01:42PM 2 THAT THERE'S A GOOD BIT OF ADDITIONAL MATERIAL THAT IS PROBABLY  
01:42PM 3 MATERIAL TO OUR PREPARATION AND IN MANY INSTANCES EXCULPATORY.

01:42PM 4 IT MAY BE PREFERABLE ULTIMATELY FOR THE AGENCIES TO  
01:42PM 5 CONDUCT THEIR THOUGHT PROCESS ON THEIR REVIEW RECOGNIZING THAT  
01:42PM 6 THEY'RE GOING TO BE OBLIGATED TO PRODUCE DOCUMENTS WHICH MEET  
01:43PM 7 THOSE STANDARDS.

01:43PM 8 SO I DON'T WANT TO FORESHADOW WHAT THEIR CONSULTATION  
01:43PM 9 PROCESS YIELDS, BUT I THINK WE SHOULD REPORT BACK AT THE END OF  
01:43PM 10 THE WEEK AFTER -- THE WEEK THAT MR. BOSTIC CONSULTS WITH HIS  
01:43PM 11 COLLEAGUES AND OTHER AGENCIES, BUT WE MAY AT THAT TIME FIND  
01:43PM 12 WE'RE NOT MAKING SUFFICIENT PROGRESS, THAT WE WOULD LIKE THE  
01:43PM 13 MOTION TO BE HEARD.

01:43PM 14 BUT I DON'T WANT TO FOREJUDGE THAT, YOUR HONOR. WE CAN  
01:43PM 15 SEE.

01:43PM 16 THE COURT: WELL, THANK YOU. THE ISSUE BEFORE THE  
01:43PM 17 COURT NOW IS TO DETERMINE A BRIEFING SCHEDULE --

01:43PM 18 MR. DOWNEY: YES.

01:43PM 19 THE COURT: -- AS TO WHEN THE GOVERNMENT SHOULD FILE  
01:43PM 20 THEIR REPLY AND OPPOSITION.

01:43PM 21 MR. DOWNEY: UNDERSTOOD. AND I THINK WE CAN DEFER  
01:43PM 22 THE OPPOSITION AT LEAST UNTIL WE FILE THAT MEMORANDUM AND UNTIL  
01:43PM 23 WE FILE THAT JOINT UPDATE.

01:43PM 24 THE COURT: SURE.

01:43PM 25 MR. DOWNEY: AND IF, IN FACT, AT THAT TIME IT'S



01:43PM 1 NECESSARY FOR THE GOVERNMENT TO CONTINUE AND GO AHEAD AND BRIEF  
01:43PM 2 IT, WE'LL DO IT THEN.

01:43PM 3 MR. BOSTIC: YOUR HONOR, NO OBJECTION TO THAT  
01:43PM 4 APPROACH FROM THE GOVERNMENT.

01:43PM 5 THE COURT: OKAY. LET ME ASK, IS THERE ANY  
01:43PM 6 CONNECTION BETWEEN -- LET'S TURN TO THE S.E.C. CASE FOR JUST A  
01:44PM 7 MOMENT.

01:44PM 8 I UNDERSTAND THE GOVERNMENT HAS FILED A MOTION TO  
01:44PM 9 INTERVENE IN THE CRIMINAL CASE. I'M JUST CURIOUS WHETHER  
01:44PM 10 THERE'S SOME CROSS-POLLINIZATION BETWEEN THESE TWO THINGS.

01:44PM 11 MR. LEACH: YES, YOUR HONOR. MR. LEACH FOR THE  
01:44PM 12 GOVERNMENT. I DON'T THINK THERE IS. THE DISCOVERY THAT  
01:44PM 13 MS. HOLMES IS SEEKING ARE DOCUMENTS IN THE POSSESSION OF THE  
01:44PM 14 FDA AND CMS WHICH THE GOVERNMENT CONTENTS ARE NOT PART OF THE  
01:44PM 15 PROSECUTION TEAM AND NOT SUBJECT TO OUR RULE 16 BRADY AND  
01:44PM 16 GIGLIO OBLIGATIONS.

01:44PM 17 THE MOTION TO INTERVENE AND STAY IS REALLY DIRECTED AT  
01:44PM 18 SOME DISCOVERY THAT MR. BALWANI IS ATTEMPTING TO TAKE IN THE  
01:44PM 19 CIVIL CASE RELATING TO DOCTORS AND PATIENTS WHO IN OUR JUDGMENT  
01:44PM 20 HAVE NOTHING TO DO WITH THE S.E.C. CASE BUT EVERYTHING TO DO  
01:44PM 21 WITH THE CRIMINAL CASE.

01:44PM 22 SO WE THINK SOME OF THE RECENT DISCOVERY HAS CROSSED THE  
01:44PM 23 LINE IN TERMS OF RELEVANCE OF THE S.E.C. CASE. WE ALSO TOOK A  
01:44PM 24 LOOK AT THE KEATING FACTORS IN THE MOST RECENT NINTH CIRCUIT  
01:45PM 25 DECISION ON STAYS, AND WE REALLY THINK THAT THE BREADTH OF

01:45PM 1 CIVIL DISCOVERY IN THE S.E.C. CASE IS DISTRACTING FROM THE  
01:45PM 2 PARTIES' ABILITY TO MOVE THE CASE FORWARD AND GET A TRIAL DATE  
01:45PM 3 IN THE CRIMINAL CASE.

01:45PM 4 SO I THINK THOSE ARE -- WE DO NOT TAKE A POSITION ON ANY  
01:45PM 5 DISCOVERY MR. BALWANI HAS TAKEN OF THE FDA OR CMS IN THE S.E.C.  
01:45PM 6 CASE. IT'S REALLY FOCUSSED ON DOCTORS AND PATIENTS AND THE  
01:45PM 7 OVERALL BREADTH OF IT.

01:45PM 8 MR. COPPERSMITH: THANK YOU, YOUR HONOR. WE'RE  
01:45PM 9 GOING TO RESPOND TO THE GOVERNMENT'S MOTION TO INTERVENE AND  
01:45PM 10 STAY. OUR OPPOSITION IS DUE TWO WEEKS FROM THIS PAST FRIDAY SO  
01:45PM 11 WE INTEND TO PUT IN A FULL OPPOSITION. WE DON'T AGREE WITH THE  
01:45PM 12 GOVERNMENT THERE SHOULD BE A MOTION, BUT LET ME SAY A FEW  
01:45PM 13 THINGS IN RESPONSE TO MR. LEACH.

01:45PM 14 THE COURT: SURE.

01:45PM 15 MR. COPPERSMITH: THAT IS, IT'S BEEN ABOUT A YEAR  
01:45PM 16 SINCE THE DISCOVERY COMMENCED IN THE S.E.C. CASE.

01:45PM 17 JUST LIKE IN THE CRIMINAL CASE, THERE ARE MILLIONS OF  
01:45PM 18 PAGES OF DOCUMENTS. AS WE SEE THE S.E.C. CASE, AND WE PUT THIS  
01:46PM 19 IN THE STATUS REPORT FOR YOUR HONOR, WE BELIEVE THERE ARE  
01:46PM 20 ALLEGATIONS ABOUT THE CAPABILITIES OF THERANOS'S LABORATORIES  
01:46PM 21 AND ITS ANALYZER AND IT NOT BEING ACCURATE. WE'VE ACTUALLY  
01:46PM 22 TRIED TO PROPOSE SOME THINGS TO THE S.E.C. WE HAVEN'T HEARD  
01:46PM 23 BACK. WE THINK IT PUTS THESE MATTERS AT ISSUE.

01:46PM 24 THE MATTER WITH RESPECT TO THE HEALTH CARE PROVIDERS,  
01:46PM 25 JUDGE COUSINS IS GOING TO HEAR THAT MOTION ON RELEVANCE ON

01:46PM 1 WEDNESDAY AND JUDGE COUSINS IS GOING TO BE WELL CAPABLE TO  
01:46PM 2 DECIDING WHAT IS RELEVANT IN THE CASE AND WHAT IS NOT, AND WE  
01:46PM 3 THINK IT'S RELEVANT.

01:46PM 4 BUT IN ADDITION, THE FACT THAT THE GOVERNMENT WAITED A  
01:46PM 5 YEAR TO TRY TO STAY AFTER MR. BALWANI PROVIDED DISCOVERY TO THE  
01:46PM 6 S.E.C., HE PROVIDED SWORN INTERROGATORY ANSWERS, HE PROVIDED  
01:46PM 7 OTHER DISCOVERY, SAT FOR THREE DAYS FOR TESTIMONY WITH THE  
01:46PM 8 S.E.C. BEFORE THE COMPLAINT WAS FILED.

01:46PM 9 TO COME IN AND TRY TO STAY AT THIS POINT I THINK IS  
01:46PM 10 TACTICAL, BUT WE'LL EXPLAIN ALL OF OUR --

01:46PM 11 THE COURT: YOU'RE ARGUING THE MOTION.

01:46PM 12 MR. COOPERSMITH: WELL, I MEAN, I'M RESPONDING TO  
01:46PM 13 MR. LEACH.

01:47PM 14 THE COURT: JUNE 10TH, I THINK.

01:47PM 15 MR. COPPERSMITH: YES, YOUR HONOR. AND I DON'T  
01:47PM 16 THINK THAT THAT MOTION SHOULD REALLY AFFECT ANYTHING THAT WE'RE  
01:47PM 17 DOING TODAY NOTWITHSTANDING MR. LEACH'S COMMENTS.

01:47PM 18 SO ONE OTHER THING THAT MAY BE IS PERTINENT AND THAT IS,  
01:47PM 19 THERE IS, AND I THINK WE MENTIONED THIS IN THE STATUS REPORT,  
01:47PM 20 TOO, THERE IS AN ISSUE WITH CMS AND FDA ON THE CIVIL SIDE JUST  
01:47PM 21 LIKE IN THE CRIMINAL CASE AND THERE WERE SUBPOENAS ISSUED TO  
01:47PM 22 THOSE AGENCIES OUT OF THE CIVIL CASE. THE S.E.C. DIDN'T OBJECT  
01:47PM 23 TO ANYTHING ABOUT RELEVANCE ON THOSE UNTIL VERY RECENTLY.  
01:47PM 24 AFTER SEVEN MONTHS THOSE SUBPOENAS WERE PENDING.

01:47PM 25 WE'VE BEEN CONFERRING, MEETING AND CONFERRING WITH CMS AND

01:47PM 1 FDA AND DOJ COUNSEL WHO REPRESENTS THOSE AGENCIES FOR MANY,  
01:47PM 2 MANY MONTHS. WE'RE TRYING TO FRAME THOSE ISSUES FOR THE COURT  
01:47PM 3 IF WE CAN'T RESOLVE THEM. OBVIOUSLY, WE HOPE WE CAN RESOLVE  
01:47PM 4 THEM. BUT THAT'S SOMETHING THAT WE'VE BEEN STRUGGLING WITH  
01:47PM 5 FOR -- YOU KNOW, SINCE SEPTEMBER SINCE WE ISSUED THOSE  
01:47PM 6 SUBPOENAS IS TO ACTUALLY GET THOSE AGENCIES TO PROVIDE  
01:47PM 7 DOCUMENTS.

01:48PM 8 THAT IS WHAT IS GOING ON.

01:48PM 9 THE COURT: OKAY. THANK YOU. ANYTHING FURTHER THEN  
01:48PM 10 ON THAT? SHOULD WE LEAVE THE JUNE 10TH DATE THEN? IS THAT  
01:48PM 11 CONVENIENT?

01:48PM 12 MR. COOPERSMITH: THAT WAS THE DATE AVAILABLE FOR  
01:48PM 13 US, SO, YES, YOUR HONOR.

01:48PM 14 MR. LEACH: IT'S CONVENIENT FOR US, YOUR HONOR, IF  
01:48PM 15 THE COURT IS AVAILABLE TO GO FORWARD.

01:48PM 16 THE COURT: I THINK THAT'S AT 10:00 A.M.

01:48PM 17 THE CLERK: YES, YOUR HONOR.

01:48PM 18 THE COURT: LET'S LEAVE THAT SET. LET'S RETURN NOW  
01:48PM 19 TO THE CRIMINAL CASE.

01:48PM 20 WHAT DO YOU SUGGEST THEN? I UNDERSTAND YOU'LL PERHAPS  
01:48PM 21 PROVIDE A MEMO PERHAPS THE WEEK AFTER, MAYBE IT'S THE SECOND  
01:48PM 22 WEEK OF MAY OR SOMETHING LIKE THAT, MR. BOSTIC.

01:48PM 23 MR. BOSTIC: THAT'S WHAT I UNDERSTAND FROM DEFENSE'S  
01:48PM 24 PROPOSAL, YOUR HONOR, AND THAT MEMO WOULD EITHER SAY THE  
01:48PM 25 PARTIES HAVE REACHED THE FOLLOWING AGREEMENT OR ARE MAKING

01:48PM 1 PROGRESS TOWARDS REACHING THIS AGREEMENT OR IT WOULD INDICATE  
01:48PM 2 THAT THERE IS NO SUCH AGREEMENT AND THAT THE GOVERNMENT IS  
01:48PM 3 PLANNING TO FILE ITS OPPOSITION. THEN MY HOPE AT THAT TIME  
01:48PM 4 WOULD BE THAT THE PARTIES INCLUDE IN THAT FILING A PROPOSED  
01:48PM 5 BRIEFING AND HEARING SCHEDULE.

01:49PM 6 IS THAT YOUR UNDERSTANDING?

01:49PM 7 MR. DOWNEY: THAT'S MY UNDERSTANDING, TOO.

01:49PM 8 THE COURT: I'LL GIVE YOU AN OPPORTUNITY AND THE  
01:49PM 9 OPPORTUNITY TO CREATE SUCH A SCHEDULE THAT COMPORTS WITH YOUR  
01:49PM 10 CALENDARS. I'M HAPPY TO GIVE THAT TO YOU FOR SUGGESTION TO THE  
01:49PM 11 COURT, AND IF WE CAN ACCOMMODATE IT, WE WILL. I'LL ACCEPT THAT  
01:49PM 12 FOR YOU.

01:49PM 13 LET'S TALK ABOUT TRIAL FOR JUST A MOMENT. I REALIZE THAT  
01:49PM 14 IT'S GOING TO BE PREMATURE BASED ON THESE PENDING MOTIONS. BUT  
01:49PM 15 WHAT ARE YOUR THOUGHTS, IF YOU HAVE ANY, ABOUT WHEN THE CASE  
01:49PM 16 WOULD PROCEED TO TRIAL, IF IT WERE TO PROCEED TO TRIAL, WHEN  
01:49PM 17 THAT MIGHT BE?

01:49PM 18 MR. DOWNEY: I THINK FROM THE DEFENSE PERSPECTIVE AT  
01:49PM 19 THIS POINT, JUDGE, WE'RE ABOUT THREE MONTHS TOO EARLY TO  
01:49PM 20 DISCUSS THAT.

01:49PM 21 IN ADDITION TO WHAT WE'VE JUST DISCUSSED, THERE ARE A  
01:49PM 22 COUPLE OF OTHER STRANDS THAT ARE GOING TO DEFINE, I THINK, THE  
01:49PM 23 SCOPE OF WHAT IS AT ISSUE.

01:49PM 24 ONE IS THAT THERE IS A TAINT TEAM THAT IS IN PLACE FOR  
01:49PM 25 PURPOSES OF REVIEW OF CERTAIN DOCUMENTS, AND THERE'S A

01:49PM 1 PROCEDURE THAT ATTACHES TO THE BACK END OF THAT WHERE THE  
01:50PM 2 DEFENSE CAN OBJECT IF DOCUMENTS ARE TO BE DISCLOSED TO THE  
01:50PM 3 GOVERNMENT.

01:50PM 4 THE DOCUMENTS THAT ARE AT ISSUE THERE I THINK ARE GOING TO  
01:50PM 5 BE QUITE MATERIAL TO THE CASE, AND WE DON'T AT THIS POINT KNOW  
01:50PM 6 WHAT THE STATUS IS OF THAT REVIEW, WHEN WE'LL GET THOSE  
01:50PM 7 DOCUMENTS, ET CETERA, BUT I THINK THAT IS A PROCESS THAT THE  
01:50PM 8 GOVERNMENT HAS SAID HAS COMMENCED AND WE WILL, I THINK,  
01:50PM 9 PRESUMABLY BE IN THAT PROCESS THREE MONTHS FROM NOW AND HAVE A  
01:50PM 10 BETTER SENSE WITH CLARITY AS TO WHEN WOULD BE AN APPROPRIATE  
01:50PM 11 TRIAL DATE.

01:50PM 12 THE OTHER PIECE OF IT, WHICH I JUST, FRANKLY, HAVE TO SOME  
01:50PM 13 EXTENT THROW MY HANDS UP ON, JUDGE, AND SAY WE HAVE A HUGE  
01:50PM 14 AMOUNT OF MATERIAL THAT HAS ALREADY BEEN PRODUCED WHICH I THINK  
01:50PM 15 THE GOVERNMENT HAS WORKED DILIGENTLY TO PRODUCE BUT MUCH OF  
01:50PM 16 WHICH WE HAVE ONLY RECENTLY GOTTEN. WE'RE TOLD BY THE  
01:50PM 17 GOVERNMENT THAT THEY ARE PRODUCING A LARGE ADDITIONAL VOLUME.  
01:50PM 18 INDEED, TODAY MR. BOSTIC HAS UNCOVERED THAT FOUR ADDITIONAL  
01:50PM 19 TERABYTES OF DATA ARE GOING TO BE DISCLOSED TO US. SO WE WANT  
01:51PM 20 TO GET OUR ARMS AROUND WHAT THAT IS, AS DOES HE.

01:51PM 21 SO I THINK WE'RE THREE MONTHS OUT FROM WRAPPING THOSE  
01:51PM 22 STRANDS UP SO THAT WE CAN KNOW WHEN A TRIAL DATE -- WHEN A  
01:51PM 23 RANGE FOR A TRIAL DATE WOULD BE APPROPRIATE AND SUGGEST A LEAD  
01:51PM 24 TIME TO YOUR HONOR.

01:51PM 25 THE COURT: WELL, THAT COMPORTS WITH WHAT YOU'RE

01:51PM 1 SUGGESTING A JULY DATE FOR A STATUS CONFERENCE.

01:51PM 2 MR. DOWNEY: STATUS CONFERENCE, YES.

01:51PM 3 MR. BOSTIC: YOUR HONOR, JUST TO UPDATE THE COURT ON  
01:51PM 4 THE TWO ISSUES JUST MENTIONED BY DEFENSE COUNSEL.

01:51PM 5 FIRST, ON THE TAINT REVIEW, COUNSEL IS CORRECT THAT THAT  
01:51PM 6 PROCESS IS ONGOING. IN FACT, THE GOVERNMENT IS ABOUT TO CLEAR  
01:51PM 7 THE FIRST BATCH OF DOCUMENTS FOR REVIEW BY THE DEFENSE. I  
01:51PM 8 BELIEVE THAT SET OF DOCUMENTS WILL INCLUDE WELL IN EXCESS OF  
01:51PM 9 100,000 OUT OF THE APPROXIMATELY 250,000 DOCUMENTS THAT ARE  
01:51PM 10 UNDERGOING THAT TAINT REVIEW. SO WE'RE MAKING GOOD PROGRESS ON  
01:51PM 11 THAT, AND IT'S MY HOPE THAT VERY SOON THE DEFENSE WILL HAVE  
01:51PM 12 ACCESS TO A VERY LARGE PORTION OF THOSE DOCUMENTS AND THEN  
01:51PM 13 WE'LL PROCEED DILIGENTLY WITH THE REST.

01:51PM 14 AS TO THE NEW INFORMATION, I DID INFORM COUNSEL FOR  
01:52PM 15 MS. HOLMES BEFORE THE HEARING THAT WE RECENTLY OBTAINED  
01:52PM 16 VOLUNTARILY FROM A WITNESS A HARD DRIVE CONTAINING  
01:52PM 17 APPROXIMATELY FOUR TERABYTES OF ADDITIONAL INFORMATION. I  
01:52PM 18 UNDERSTAND THAT MOST OF THAT VOLUME COMES FROM PROMOTIONAL FILM  
01:52PM 19 AND VIDEO CREATED BY THERANOS ITSELF WHEN THE COMPANY WAS  
01:52PM 20 OPERATIONAL. SO I THINK THE LARGE AMOUNT MIGHT BE SOMEWHAT  
01:52PM 21 MISLEADING BECAUSE THESE ARE NOT JUST PAGES OF SOLID DOCUMENTS.  
01:52PM 22 I THINK A LOT OF THAT DATA IS MADE UP BY VIDEO FILES.

01:52PM 23 THE COURT: I SEE. THAT'S HELPFUL.

01:52PM 24 MR. SCHENK?

01:52PM 25 MR. SCHENK: YES, YOUR HONOR. ON THE ISSUE OF

01:52PM 1 SETTING A TRIAL DATE, WE DO THINK IT'S APPROPRIATE TO SET A  
01:52PM 2 TRIAL DATE. WE'RE NOT ASKING THE COURT TO SET A TRIAL DATE IN  
01:52PM 3 THREE MONTHS OR SIX MONTHS, BUT IT DOES HELP CRYSTALIZE MANY OF  
01:52PM 4 THE ISSUES BEFORE THE COURT AND BEFORE THE PARTIES TO HAVE THAT  
01:52PM 5 TRIAL DATE.

01:52PM 6 WE ALSO THINK THAT THE TRIAL WILL BE LENGTHY AND TO  
01:52PM 7 RESERVE THE BLOCK OF TIME ON THE COURT'S CALENDAR AND ON ALL OF  
01:53PM 8 THE PARTIES' CALENDAR AND SO THAT WE CAN SEND TRIAL SUBPOENAS  
01:53PM 9 TO WITNESSES TO BEGIN TO BLOCK OUT TIME. IT'S HELPFUL TO HAVE  
01:53PM 10 A TRIAL DATE.

01:53PM 11 WE THINK THAT TO NOT MEASURE BY COURT WEEKS BUT RATHER  
01:53PM 12 TRIAL DAYS, OUR ESTIMATE AT THIS POINT WOULD BE ABOUT 40 TRIAL  
01:53PM 13 DAYS THOUGH ACKNOWLEDGING WE HOPE THAT WE'RE ABLE TO REACH SOME  
01:53PM 14 STIPULATIONS WITH THE DEFENSE TO ALLEVIATE CUSTODIAL WITNESSES,  
01:53PM 15 AND OBVIOUSLY AS THE TRIAL WOULD GET CLOSER, WE WOULD BE ABLE  
01:53PM 16 TO PROVIDE A MORE ACCURATE OR A BETTER ESTIMATE.

01:53PM 17 BUT AT THIS POINT, YOU KNOW, THAT'S ROUGHLY TWO MONTHS  
01:53PM 18 GOING EVERY COURT DAY SO IT'S PROBABLY GOING TO GO A LITTLE BIT  
01:53PM 19 LONGER THAN THAT AND TO GET TWO MONTHS ON THE COURT'S CALENDAR  
01:53PM 20 IS NOT SOMETHING THAT WE CAN DO ON SHORT NOTICE.

01:53PM 21 SO WE WOULD ASK THE COURT TO THINK ABOUT SETTING US FOR  
01:53PM 22 TRIAL EVEN A YEAR FROM NOW. THE GOVERNMENT'S REQUEST WOULD BE  
01:53PM 23 TO SET THE TRIAL DATE.

01:53PM 24 WE ACKNOWLEDGE THE POINTS THAT THE DEFENSE HAS MADE TO THE  
01:54PM 25 COURT ABOUT THE VOLUMINOUS DISCOVERY AND THEIR NEED TO REVIEW



01:54PM 1 THAT DISCOVERY. A YEAR FROM NOW, THOUGH, WE THINK WOULD  
01:54PM 2 ACCOMPLISH THAT. AND WE SHOULD ALSO NOTE THAT A LOT OF THE  
01:54PM 3 DISCOVERY PRODUCTION IN THIS CASE IS AN EXERCISE IN PROVIDING  
01:54PM 4 THERANOS DOCUMENTS BACK TO THE DEFENSE. NOW IT'S INDIVIDUAL  
01:54PM 5 DEFENDANTS, NOT THE CORPORATION. THERE'S BEEN A LOT OF  
01:54PM 6 LITIGATION THAT HAS PREDATED THE CRIMINAL CASE.

01:54PM 7 SO THEY'VE RECEIVED SOME OF THESE DOCUMENTS AND NOW TWO OR  
01:54PM 8 THREE TIMES FROM US, BUT WE ACKNOWLEDGE THEIR NEED TO  
01:54PM 9 EFFECTIVELY PREPARE BY REVIEWING THESE DOCUMENTS. THEY HAVE  
01:54PM 10 NOT WALKED IN AND ASKED FOR A SPEEDY TRIAL BECAUSE OF THE  
01:54PM 11 VOLUMINOUS NATURE OF THE DISCOVERY.

01:54PM 12 ALTHOUGH IT IS OUR VIEW THAT SETTING A TRIAL DATE NOW IS  
01:54PM 13 IMPORTANT TO CRYSTALLIZE THOSE ISSUES AND TO BLOCK THAT TIME  
01:54PM 14 OUT ON THE COURT'S CALENDAR.

01:54PM 15 AGAIN, EVEN IF IT'S A YEAR FROM NOW WHEN THE COURT HAS THE  
01:54PM 16 TIME TO GIVE US THOSE TWO-PLUS MONTHS, WE WOULD APPRECIATE IT.

01:54PM 17 THE COURT: OKAY.

01:54PM 18 MR. DOWNEY: YOUR HONOR --

01:54PM 19 THE COURT: WELL, LOOKING AHEAD -- I KNOW YOU CAN'T  
01:55PM 20 TELL ME TODAY, COUNSEL, YOU CAN'T TELL ME TODAY WHAT YOUR --  
01:55PM 21 THE TIME YOU NEED FOR YOUR DEFENSE.

01:55PM 22 MR. DOWNEY: NO.

01:55PM 23 THE COURT: BUT MY SENSE IS THAT IT MIGHT MIRROR  
01:55PM 24 THIS AS WELL AND PERHAPS BE LONGER.

01:55PM 25 MR. COOPERSMITH: YES, YOUR HONOR.

01:55PM 1 MR. DOWNEY: THAT'S OUR SENSE, YOUR HONOR, FROM WHAT  
01:55PM 2 THE GOVERNMENT HAS SAID TO US.

01:55PM 3 THE COURT: SO RECOGNIZING THE BUSINESS OF FEDERAL  
01:55PM 4 DISTRICT COURTS IN THIS -- IN THE NORTHERN DISTRICT OF  
01:55PM 5 CALIFORNIA, AND PARTICULARLY THE SAN JOSE DIVISION, IF I CAN  
01:55PM 6 SAY THAT, WE'RE BUSY.

01:55PM 7 MR. DOWNEY: I SEE.

01:55PM 8 THE COURT: IT WOULD MAKE SENSE FOR MY CALENDAR, AND  
01:55PM 9 MY COLLEAGUES AS WELL, TO BLOCK OUT SOME TIME, EXPECTATION SO  
01:55PM 10 THAT WE CAN PROPERLY ADJUST OUR CALENDAR FOR THE OTHER CASES  
01:55PM 11 THAT WE HAVE NEED TO TAKE CARE OF.

01:56PM 12 IS THAT SOMETHING THAT WE CAN DO TODAY?

01:56PM 13 MR. DOWNEY: YOUR HONOR, CAN I MAKE A SUGGESTION?  
01:56PM 14 EVERYTHING THAT MR. SCHENK SAYS IS SENSIBLE. THIS IS GOING TO  
01:56PM 15 BE A LONG TRIAL, AND IT'S GOING TO REQUIRE A LOT OF  
01:56PM 16 COORDINATION, AND I THINK A SIGNIFICANT ADVANCE NOTICE IS  
01:56PM 17 APPROPRIATE.

01:56PM 18 I REALLY DO THINK WHEN THE PROCESSES I'VE IDENTIFIED HAVE  
01:56PM 19 HAD THE OPPORTUNITY TO PLAY OUT, WE'LL BE IN A BETTER POSITION  
01:56PM 20 TO SAY WHETHER THAT'S NINE MONTHS FROM JULY, WHICH WOULD STILL  
01:56PM 21 BE A YEAR FROM TODAY, OR WHETHER IT'S A YEAR FROM JULY. I  
01:56PM 22 THINK THE WORST POSSIBLE RESULT, WHICH WE ALL AGREE ON AND  
01:56PM 23 WHICH I'M SURE THE COURT AGREES ON, IS GETTING CLOSER TO A  
01:56PM 24 TRIAL AND UNEXPECTED EVENTS THAT CHANGE THE TRIAL DATE.

01:56PM 25 SO I WILL COMMIT TO THE COURT THAT WE WILL TRY TO GIVE A

01:56PM 1 RELIABLE TRIAL DATE AS I'M SURE THE GOVERNMENT WILL WHEN WE  
01:56PM 2 PROPOSE ONE. BUT MY SUGGESTION WOULD BE THAT WE CONFER IN  
01:56PM 3 ADVANCE OF A JULY CONFERENCE, COME UP WITH A PROPOSED SCHEDULE,  
01:56PM 4 ASSUMING THE ISSUES THAT WE'VE IDENTIFIED ARE RESOLVED AND  
01:57PM 5 KNOWABLE AT THAT POINT, AND COME BACK AT THAT TIME AND TRY TO  
01:57PM 6 IDENTIFY WHAT THE APPROPRIATE LENGTH OF TIME IS AND WHAT THE  
01:57PM 7 APPROPRIATE PRECISE SCHEDULING IS SO THAT WHEN THE COURT  
01:57PM 8 SCHEDULES THOSE DATES IT CAN HAVE CONFIDENCE IN THEM.

01:57PM 9 MR. COOPERSMITH: YOUR HONOR, IF I COULD ADD ONE  
01:57PM 10 THING. SO THE GOVERNMENT ON THE CRIMINAL SIDE HERE HAS BEEN  
01:57PM 11 INVESTIGATING THIS CASE SINCE SOMETHING LIKE EARLY 2016 AND  
01:57PM 12 HAS -- IT'S NOW, YOU KNOW, SINCE THE INDICTMENT WAS IN JUNE OR  
01:57PM 13 MID-JUNE OF 2018 AND WE JUST RECEIVED 3 MILLION PAGES OF  
01:57PM 14 DOCUMENTS, YOU KNOW, IN THE MIDDLE OF MARCH. SO JUST VERY  
01:57PM 15 RECENTLY.

01:57PM 16 SO IT IS OBVIOUSLY VERY DIFFICULT TO REVIEW ALL OF THESE  
01:57PM 17 DOCUMENTS, BUT THE THING I WANTED TO SAY IN PARTICULAR THAT  
01:57PM 18 HASN'T BEEN MENTIONED YET IS THAT THE GOVERNMENT HAS SAID THAT  
01:57PM 19 IT'S CONTINUING TO INVESTIGATE THIS CASE. IT'S CONTINUING TO  
01:57PM 20 USE THE GRAND JURY, IT'S CONTINUING TO DO THAT.

01:57PM 21 IF WE SET THE STATUS HEARING IN JULY AS SUGGESTED IN THE  
01:57PM 22 STATUS REPORT AND WE ALL COME BACK AND AT THAT POINT WE'RE ALL  
01:58PM 23 PREPARED TO TALK ABOUT A TRIAL DATE, I'M HOPING THAT THE  
01:58PM 24 GOVERNMENT WILL BE IN A POSITION TO SAY WHETHER THE CASE AS  
01:58PM 25 CHARGED NOW IS WHAT THE CASE IS OR WHETHER IT'S GOING TO BE

01:58PM 1 SOMETHING DIFFERENT.

01:58PM 2 YOU KNOW, CERTAINLY BY JULY THEY OUGHT TO BE ABLE TO DO  
01:58PM 3 THAT IF THEY'RE NOT PREPARED TO DO THAT TODAY.

01:58PM 4 THE COURT: IT SOUNDS LIKE A REQUEST.

01:58PM 5 MR. SCHENK: YOUR HONOR, WE APPRECIATE THE REQUEST.  
01:58PM 6 WE RESPECTFULLY ARE GOING TO DECLINE TO TAKE MR. COOPERSMITH UP  
01:58PM 7 ON THAT REQUEST.

01:58PM 8 IF HIS CONCERN IS BEING SHORT SET; THAT IS, GOING TO TRIAL  
01:58PM 9 ON AN INDICTMENT THAT WAS NOT THE INDICTMENT THAT HE WAS  
01:58PM 10 EXPECTING TO GO TO TRIAL ON, THE SPEEDY TRIAL ACT 3161 DEALS  
01:58PM 11 WITH THAT SCENARIO. THERE IS LAW ON THAT SUBJECT.

01:58PM 12 IF IT ISN'T THAT AND RATHER IT'S JUST TELL US IF YOU'RE  
01:58PM 13 STILL INVESTIGATING US AND IF YOU'RE LIKELY TO FACE MORE  
01:58PM 14 CRIMINAL CHARGES, THAT'S SOMETHING THAT WE DON'T DO AND UNLESS  
01:58PM 15 THE COURT WOULD ORDER US TO WE WOULD ASK TO BE HEARD ON THE  
01:58PM 16 ISSUE. WE'RE NOT INCLINED TO REVEAL ONGOING INVESTIGATIONS.

01:58PM 17 THE COURT: PERHAPS THAT WAS AN ASPIRATIONAL  
01:59PM 18 STATEMENT. WELL, LET'S -- WHY DON'T WE -- IT SEEMS TO ME THAT  
01:59PM 19 I'D LIKE TO GET SOME CLOSURE ON CAPTURING A SERIES OF -- IT  
01:59PM 20 SOUNDS LIKE WE'RE GOING TO CAPTURE A SERIES OF MONTHS THAT THE  
01:59PM 21 TRIAL WILL BE IN, AND OF COURSE WE'LL HAVE TO TIME QUALIFY, ET  
01:59PM 22 CETERA, BUT I WOULD LIKE TO CAPTURE SOME TIME CERTAIN IF WE CAN  
01:59PM 23 SO THAT WE CAN RESERVE THAT TIME FOR ALL OF YOU FOR THE WORK  
01:59PM 24 THAT YOU NEED TO DO.

01:59PM 25 PERHAPS WE CAN BEST DO THAT IN JULY, AND I'M LOOKING AT

01:59PM 1 OUR CALENDAR THINKING JULY 1ST OR JULY 8TH.

01:59PM 2 DO YOU HAVE A PREFERENCE, ADRIANA?

01:59PM 3 THE CLERK: FOR FURTHER STATUS, YOUR HONOR?

01:59PM 4 THE COURT: YES.

01:59PM 5 THE CLERK: JULY 1ST IS A BETTER DATE FOR THE COURT.

01:59PM 6 MR. DOWNEY: THAT'S FINE FOR MS. HOLMES.

01:59PM 7 THE COURT: ANY OBJECTION TO JULY 1ST?

02:00PM 8 MR. COOPERSMITH: NO, YOUR HONOR.

02:00PM 9 MR. BOSTIC: THAT'S FINE FOR THE GOVERNMENT.

02:00PM 10 MR. SCHENK: NO.

02:00PM 11 THE COURT: I HEAR NONE. THANK YOU. THAT WILL

02:00PM 12 ALLOW US ALSO TO HEAR THE JUNE 10TH MOTION SO WE'LL HAVE SOME

02:00PM 13 RESOLUTION ON THE JUNE 10TH MOTION WHICH MAY BE HELPFUL, AND

02:00PM 14 DEPENDING ON YOUR DISCUSSIONS ABOUT THIS DISCOVERY ISSUE,

02:00PM 15 WHATEVER REMAINS MIGHT MAKE THAT MOTION LESS INTENSIVE AS IT

02:00PM 16 PRESENTS NOW. OF COURSE, I ONLY HAVE ONE SIDE OF IT.

02:00PM 17 ALL RIGHT. LET'S CONTINUE THESE CASES. ANYTHING FROM THE

02:00PM 18 S.E.C. THAT I SHOULD KNOW ABOUT?

02:00PM 19 MS. LAMARCA: YES, YOUR HONOR. THIS IS MORE IN THE

02:00PM 20 NATURE OF HOUSEKEEPING BUT CURRENTLY THE COURT HAS A MAY 30TH

02:00PM 21 DATE FOR SETTING A TRIAL IN THIS CASE AND THE LAST TIME THAT WE

02:00PM 22 MET THE S.E.C. HAD AGREED, AT THE DEFENDANT'S REQUEST, TO ALLOW

02:00PM 23 FOR A POTENTIAL EXTENSION OF OUR DISCOVERY CUTOFF.

02:01PM 24 THE COURT: RIGHT.

02:01PM 25 MS. LAMARCA: I GET THAT THIS MAY CHANGE GIVEN THE

02:01PM 1 STAY MOTION, ET CETERA, AND WE'RE WILLING TO DEFER THAT ISSUE  
02:01PM 2 UNTIL THE FUTURE, BUT I DO THINK THAT SINCE THE MOTION HAS BEEN  
02:01PM 3 SET FOR JUNE 10TH, WE AT LEAST NEED TO TAKE CARE OF THIS MAY  
02:01PM 4 30TH DATE IN THE INTERIM.

02:01PM 5 MR. COOPERSMITH: THAT MAKES SENSE, YOUR HONOR, THAT  
02:01PM 6 WE MOVE THE MAY 30TH. I AGREE WITH MS. LAMARCA.

02:01PM 7 REGARDING THE STAY MOTION, AS THE COURT ALREADY SAID THAT  
02:01PM 8 WILL BE HEARD ON JUNE 10TH, AND WE'LL RESPOND, AND I'M SURE THE  
02:01PM 9 GOVERNMENT WILL SUBMIT A REPLY BRIEF.

02:01PM 10 BUT I THINK THAT THE REQUEST FOR A CONTINUANCE OR AN  
02:01PM 11 EXTENSION OF DISCOVERY SHOULD BE RULED AND DECIDED ON TODAY,  
02:01PM 12 AND THERE'S A FEW REASONS FOR THAT.

02:01PM 13 FIRST OF ALL, THE S.E.C. AND THE DEFENSE FOR MR. BALWANI  
02:01PM 14 AGREE THAT THERE SHOULD AN EXTENSION OF DISCOVERY. WE DISAGREE  
02:01PM 15 ABOUT EXACTLY WHAT THE LENGTH SHOULD BE. THEY SAID UP TO 3  
02:01PM 16 MONTHS, AND WE THINK THE MAGNITUDE OF THIS CASE AND THE VOLUME  
02:01PM 17 OF DOCUMENTS WARRANT AN EXTENSION OF 12 MONTHS, BUT WE AGREE ON  
02:02PM 18 AN EXTENSION.

02:02PM 19 SO IF THAT CAN BE DECIDED UPON, THAT WAY WHAT WILL HAPPEN  
02:02PM 20 IS THAT IF THE COURT DENIES THE GOVERNMENT'S MOTION TO STAY,  
02:02PM 21 WE'LL BE IN A POSITION TO CONTINUE TO TAKE DISCOVERY AND ALSO  
02:02PM 22 RIGHT NOW WE'LL BE ABLE TO GET THINGS ON THE CALENDAR, BECAUSE  
02:02PM 23 AS I SAID THE LAST TIME I WAS BEFORE THE COURT, SOME OF THESE  
02:02PM 24 WITNESSES ARE BILLIONAIRES AND OTHERS OF THAT ILK WHO MAKE IT  
02:02PM 25 VERY DIFFICULT TO SCHEDULE, AND WE TRY TO BE COURTEOUS IN

02:02PM 1 SCHEDULING TIME FOR THAT THOSE PEOPLE.

02:02PM 2 THE COURT: THEY HAVEN'T MET THE UNITED STATES  
02:02PM 3 MARSHAL.

02:02PM 4 MR. COOPERSMITH: IF IT CAME TO THAT I SUPPOSE THEY  
02:02PM 5 COULD, BUT WE DON'T WANT TO HAVE THAT SITUATION IF WE CAN AVOID  
02:02PM 6 IT.

02:02PM 7 (LAUGHTER.)

02:02PM 8 MR. COOPERSMITH: BUT, YOUR HONOR, IF WE AGREE ON  
02:02PM 9 THE EXTENSION OR THE COURT RULES ON AN EXTENSION TODAY,  
02:02PM 10 OBVIOUSLY IF ON JUNE 10TH THE COURT DOES STAY THE CASE, OVER  
02:02PM 11 OUR OPPOSITION, THEN THAT WILL BE THE END OF DISCOVERY UNTIL  
02:02PM 12 SOME OTHER POINT IN TIME.

02:02PM 13 THE COURT: I APPRECIATE THAT. I THINK A YEAR STAY  
02:02PM 14 IS A LITTLE -- THAT'S JUST A BRIDGE TOO FAR TODAY FOR ME TO  
02:03PM 15 MAKE.

02:03PM 16 ANYTHING FURTHER ON THAT?

02:03PM 17 AND PERHAPS -- I DON'T MEAN TO SUGGEST THAT DISCOVERY  
02:03PM 18 SHOULD BE INCREMENTAL AT ALL. I'D LIKE TO GIVE YOU FULL  
02:03PM 19 LATITUDE OF DISCOVERY THAT YOU NEED, BUT I DO THINK THAT IN ALL  
02:03PM 20 CANDOR A YEAR IS A BIT MUCH, AND I WAS LOOKING AT 90 DAYS AND  
02:03PM 21 PERHAPS WE CAN START WITH THAT AND SEE WHERE WE GO.

02:03PM 22 EVERYTHING IS KIND OF FLUID HERE IN ANY EVENT.

02:03PM 23 MR. COOPERSMITH: I UNDERSTAND WHAT THE COURT IS  
02:03PM 24 SAYING OF COURSE. THE PROBLEM IS, YOUR HONOR, IF WE ONLY HAVE  
02:03PM 25 A THREE-MONTH EXTENSION, WE'RE NOW GOING TO BE IN THE SUMMER

02:03PM 1 TOWARDS THE END OF THAT PERIOD. IT'S GOING TO BE VERY  
02:03PM 2 DIFFICULT TO SCHEDULE THINGS FOR SOME WITNESSES,  
02:03PM 3 NOTWITHSTANDING THE POWER OF THE UNITED STATES MARSHALS, YOUR  
02:03PM 4 HONOR, AND --

02:03PM 5 THE COURT: YOU UNDERESTIMATE THEM.

02:03PM 6 MR. COOPERSMITH: NO, I DON'T. I WAS A FEDERAL  
02:03PM 7 PROSECUTOR, AND I HAVE TOTAL FAITH IN THE PARTIALS, BUT I DON'T  
02:03PM 8 THINK THAT'S WHERE WE REALLY WANT TO BE.

02:03PM 9 THE COURT: SURE. I APPRECIATE THAT.

02:03PM 10 MR. COOPERSMITH: SO THE PROBLEM IS IN SOME CASES  
02:04PM 11 WE'RE ALREADY TALKING TO WITNESSES, ASSUMING THERE WAS ANY  
02:04PM 12 EXTENSION, OF SCHEDULING THINGS IN JULY, AND THAT'S THREE  
02:04PM 13 MONTHS FROM NOW.

02:04PM 14 SO I THINK IT'S GOING TO MAKE IT VERY DIFFICULT FOR  
02:04PM 15 SCHEDULING PURPOSES IF WE HAVE ONLY A THREE MONTH EXTENSION  
02:04PM 16 GIVEN THAT WILL BE RIGHT AT THE SUMMER PERIOD AT THAT POINT.

02:04PM 17 SO IF THE COURT IS NOT WILLING TO GRANT A 12-MONTH  
02:04PM 18 EXTENSION, OBVIOUSLY THAT'S WHAT WE REQUESTED, SOME PERIOD OF  
02:04PM 19 TIME BETWEEN THE 3 MONTHS THE S.E.C. SAID AND THE 12 MONTHS  
02:04PM 20 WE'RE SAYING WOULD MAKE SENSE.

02:04PM 21 AGAIN, YOU KNOW, THE STAY MOTION WON'T AFFECT IT BECAUSE  
02:04PM 22 THE COURT CAN RULE ON JUNE 10TH ONE WAY OR THE OTHER.

02:04PM 23 MS. LAMARCA: YOUR HONOR, WE OPPOSE A LONGER  
02:04PM 24 EXTENSION FOR THE REASONS THAT WE SET FORTH IN THE JOINT CMC  
02:04PM 25 STATEMENT. I THINK ONE THING THAT WE HAVE NOT SEEN IN THIS



02:04PM 1 CASE IS ANYTHING OTHER THAN ARGUMENTS ABOUT THINGS LIKE  
02:04PM 2 DISCOVERY, AND IT IS, NO DOUBT, DIFFICULT TO GET SOME WITNESSES  
02:04PM 3 TO AGREE TO CERTAIN DATES, BUT WE DO IT ALL OF THE TIME.  
02:04PM 4 THAT'S WHAT WE DO.

02:04PM 5 AND IN OUR CASES A THREE MONTH EXTENSION USUALLY WORKS FOR  
02:05PM 6 EVERYONE. SO I CAN'T IMAGINE IF THIS IS SO DIFFERENT THAT IT  
02:05PM 7 REALLY REQUIRES THAT WE DEPART FROM THE NORMS IN ALL OF OUR  
02:05PM 8 CASES. WE WOULD OPPOSE ANYTHING LONGER THAN THREE MONTHS.

02:05PM 9 MR. COOPERSMITH: YOUR HONOR, ONE OTHER THING ABOUT  
02:05PM 10 THAT. AS WE SAID IN THE STATUS REPORT, EVERY STEP OF THE WAY  
02:05PM 11 WE HAVE RUN INTO NOTHING BUT OBSTACLES WITH SCHEDULING  
02:05PM 12 WITNESSES FOR DEPOSITIONS, FOR DOCUMENTS. EVEN WHEN IT COMES  
02:05PM 13 TO THE UNITED STATES GOVERNMENT ITSELF, WE ISSUED SUBPOENAS TO  
02:05PM 14 CMS AND FDA, AS I SAID BEFORE, IN SEPTEMBER OF 2018, AND WE'VE  
02:05PM 15 MET AND CONFERRED FOR MONTHS, AND MONTHS, AND MONTHS AND NOW WE  
02:05PM 16 ARE TRYING TO FRAME THE ISSUES BEFORE THE COURT IF WE HAVE TO  
02:05PM 17 GO TO THE MOTION.

02:05PM 18 IT'S ONE THING AFTER ANOTHER. I CAN TELL YOU THESE THIRD  
02:05PM 19 PARTIES, THESE BILLIONAIRES AND OTHERS, NOT SURPRISINGLY, THEY  
02:05PM 20 REALLY DON'T WANT TO HAVE ANYTHING TO DO WITH THIS CASE. THEY  
02:05PM 21 HAVE BIG LAW FIRMS REPRESENTING THEM. IT'S NOT THAT WE'RE  
02:05PM 22 POWERLESS, YOUR HONOR. WE UNDERSTAND WE CAN PUT OUR FOOT DOWN.  
02:06PM 23 WE HAVE IN SOME INSTANCES. IT'S VERY DIFFICULT, AND AS WE HAVE  
02:06PM 24 SAID, WE HAVE RUN INTO NOTHING BUT OBSTACLES.

02:06PM 25 IN ADDITION, AS WE SAID IN THE STATUS REPORT, WE LEARNED

02:06PM 1 THAT THE S.E.C. HAD DOCUMENTS FROM SOME AGENCIES FOR A COUPLE  
02:06PM 2 OF YEARS, AND, YOU KNOW, HAD NOT PRODUCED THEM INITIALLY AND  
02:06PM 3 THEN WE FINALLY DID GET THEM.

02:06PM 4 I'VE WRITTEN THREE LETTERS, YOUR HONOR, TO COUNSEL FOR THE  
02:06PM 5 S.E.C. SAYING CAN YOU PLEASE CONFIRM THAT YOU HAVE EVERY  
02:06PM 6 DOCUMENT THAT YOU HAVE FROM THIRD PARTIES AND THAT'S  
02:06PM 7 DISCOVERABLE, AND I HAVE NEVER GOTTEN A RESPONSE TO ANY OF THE  
02:06PM 8 PARTIES ON THAT POINT.

02:06PM 9 I UNDERSTAND COUNSEL FOR THE S.E.C. IS BUSY AND THEY HAVE  
02:06PM 10 A LOT OF CASES, BUT THE POSTURE OF THIS CASE RIGHT NOW, I  
02:06PM 11 THINK, FULLY WARRANTS A LONGER EXTENSION THAN THE THREE MONTHS,  
02:06PM 12 AND I THINK THAT WILL MAKE DISCOVERY EFFICIENT.

02:06PM 13 AGAIN, THE COURT CAN RULE ON THE OTHER ISSUE ON JUNE 10TH.

02:06PM 14 MS. LAMARCA: WE DON'T HAVE ANYTHING FURTHER. WE  
02:06PM 15 DISAGREE WITH COUNSEL'S REPRESENTATIONS ABOUT DISCOVERY IN THIS  
02:06PM 16 CASE SO FAR.

02:06PM 17 THE COURT: OKAY. THANK YOU. ANYONE ELSE WISH TO  
02:06PM 18 BE HEARD ON THIS? ALL RIGHT. THANK YOU VERY MUCH.

02:06PM 19 WELL, I APPRECIATE YOUR RECOGNIZING ASPIRATIONAL GOALS BUT  
02:07PM 20 A YEAR, THAT'S A BRIDGE TOO FAR, AS I'VE SAID. SO 90 DAYS  
02:07PM 21 SOUNDS REASONABLE TO ME, BUT I'LL MAKE IT 120 DAYS. I KNOW  
02:07PM 22 THAT'S NOT EXACTLY WHAT YOU WANT, BUT WE'LL MAKE IT 120 DAYS  
02:07PM 23 AND THEN WE'LL HOPEFULLY -- WELL, WE'LL SEE EACH OTHER JULY  
02:07PM 24 1ST, AND BY THEN WE'LL HAVE SOME KNOWLEDGE AS TO THE JUNE 10TH  
02:07PM 25 MOTION AS WELL AND THAT WILL BE HELPFUL AS WELL.

02:07PM 1 MR. COOPERSMITH: JULY 1ST, YOUR HONOR?

02:07PM 2 THE COURT: YES. JULY 1ST WILL BE OUR NEXT STATUS  
02:07PM 3 CONFERENCE, JULY 1ST, JULY 1ST, AND THAT WILL BE AT 1:30. I  
02:07PM 4 WILL EXCLUDE TIME AS TO EACH DEFENDANT IN EACH CASE TO ALLOW  
02:07PM 5 FOR EFFECTIVE REPRESENTATION, AND THERE'S OTHER TERABYTES AND  
02:07PM 6 OTHER DISCOVERY THAT YOU HAVE TALKED ABOUT TODAY THAT COUNSEL  
02:07PM 7 HAS INDICATED THEY NEED TO REVIEW.

02:07PM 8 ANY OBJECTION TO THE COURT EXCLUDING TIME ON THAT BASIS?

02:07PM 9 MR. DOWNEY: NO OBJECTION FOR MS. HOLMES.

02:08PM 10 MR. COOPERSMITH: NO OBJECTION FOR MR. BALWANI.

02:08PM 11 THE COURT: ALL RIGHT. TIME IS EXCLUDED, AND WE'LL  
02:08PM 12 SEE EVERYONE BACK ON THAT DATE.

02:08PM 13 ANYTHING FURTHER BEFORE WE END TODAY?

02:08PM 14 MR. COOPERSMITH: ONE QUICK THING, YOUR HONOR.

02:08PM 15 THE COURT: YES.

02:08PM 16 MR. COOPERSMITH: UNTIL THE JUNE 10TH MOTION IS  
02:08PM 17 HEARD AND THE COURT RULES ON THAT, THERE'S NO STAY IN EFFECT?

02:08PM 18 THE COURT: YES, THAT'S CORRECT. THANK YOU VERY  
02:08PM 19 MUCH. WE'LL SEE YOU SOON.

20 (COURT CONCLUDED AT 2:08 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: APRIL 25, 2019